

MAR 03 2016

SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

In the matter of: reclamation at an unnamed, unpermitted mine, known by the Division as the Limestone mine, file no. S/037/0123, operated by Monument Resources, L.L.C., located in the west ½ of Section 6, Township 42 South, Range 19 East, Salt Lake Base and Meridian, in San Juan County, Utah

[PROPOSED]
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

Docket No. 2016-003
Cause No. S/037/0123

Introduction

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the Board) on Wednesday, February 24, 2016 in the Utah Department of Natural Resources building in Salt Lake City. The following Board members were present and participated at the hearing: Chairman Ruland J Gill, Jr., Susan S. Davis, Carl F. Kendell, Gordon L. Moon and Chris D. Hansen. Board members Michael R. Brown and Richard K. Borden did not participate. Michael S. Johnson, Esq., Assistant Attorney General, represented the Board.

John Robinson Jr., Esq., Assistant Attorney General, represented the Utah Division of Oil, Gas and Mining (the Division). With him on the Notice

of Agency Action were Steven F. Alder, Esq. and Melissa L. Reynolds, Esq. Mike Bradley, Reclamation Specialist, testified on behalf of the Division.

Respondent Monument Resources, LLC did not appear at the hearing nor did it file a written response to the Division's Notice of Agency Action. The Division proceeded with its case in chief to make a record in support of the relief requested.

Findings of Fact

1. Monument Resources, LLC operates a mine about 1.2 miles north-northwest of Mexican Hat in San Juan County, Utah. Specifically, the mine is located in the west ½ of Section 6, Township 42 South, Range 19 East, Salt Lake Base and Meridian.
2. Monument Resources does not have a permit to conduct mining operations in Utah. The Division refers to the operation as the Limestone mine (the Mine), and for record keeping purposes assigned it file number S/037/0123.
3. The Mine is a mining operation as defined by Utah Administrative Code Rule 647-1-106 because Monument Resources conducted surface mining

with mechanized earth-moving equipment to explore for and extract limestone, which is a mineral deposit.

4. The Division provided Monument Resources with information on obtaining a permit in 2010, but Monument Resources never filed a Notice of Intention to Commence Small Mining Operations (an NOI).
5. On July 15, 2014 the Division ordered Monument Resources to submit an NOI and to pay the \$150 application fee. The Division also notified Monument Resources that it would need to provide a reclamation surety in order to complete the application process.
6. Monument Resources paid the initial application fee and filed a partial NOI in October 2014. The Division deemed the NOI incomplete and sent a deficiency letter on October 29 requiring Monument Resources to correct the NOI and submit a reclamation surety.
7. Monument Resources provided a second incomplete NOI on December 8, 2014. The Division combined the information and provided Monument Resources with a complete NOI for signature on December 24, 2014.

8. When the Division sent Monument Resources the NOI for signature, it also sent a copy of a Reclamation Contract for signature and reminded Monument Resources of its obligation to provide a reclamation surety.
9. The Division sent Monument Resources another letter on March 16, 2015 providing the company with a final opportunity to comply with the Division's requirements. The Division requested that Monument Resources do so by April 15, 2015.
10. Monument Resources responded on April 16. It expressly refused to provide a reclamation surety as required by the Act and the Rules.
11. Given the failure to provide a complete NOI and refusal to provide a reclamation surety, the Division issued Monument Resources a Cessation Order (CO) on April 20, 2015. The CO required reclamation of the Mine by June 20, 2015.
12. The Division conducted an inspection of the Mine on June 25, 2015 and found that no reclamation had occurred.
13. On August 14, 2015, the Division issued a proposed assessment for the CO. The assessment officer used Rule 647-7-103 to assess civil penalties amounting to \$22,500.

14. The proposed assessment is now final.

Conclusions of Law

15. Proper notice of the time, place, and purpose of this hearing was given to all parties with legally protectable interests in the Cause.
16. The Utah Mined Land Reclamation Act, Utah Code §§ 40-8-1 to -23, grants the Board jurisdiction over all persons and property necessary to enforce the Act. Utah Code § 40-8-5. The Act also grants the Board the power to hold hearings and issue orders based on those hearings. *Id.* § 40-8-6.
17. This proceeding was conducted formally in accordance with Utah Administrative Code Titles R641 and R647, and with Sections 63G-4-204 to -209 of the Utah Code.
18. Monument Resources, LLC did not participate in the hearing or otherwise respond to the Notice of Agency Action.
19. Therefore, the Board holds Monument Resources in default.
20. Monument Resources operated a mine without a permit in violation of the Utah Mined Land Reclamation Act.

21. Monument Resources failed and refused to conduct reclamation of the Mine.

Order

Based on the Notice of Agency Action, the Exhibits, and evidence submitted at hearing, the Board ORDERS:

- A. The Division is hereby granted authority to conduct reclamation of the Mine;
- B. The Division and the Utah Attorney General's Office are hereby authorized to recover the costs and expenses of reclamation through a civil action against Monument Resources, LLC.
- C. The Division and the Utah Attorney General's Office are hereby authorized to collect civil penalties in the amount of \$22,500 from Monument Resources, LLC through a civil action.

Notice

This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as

required by the Administrative Procedures Act, Utah Code § 63G-4-208 and Utah Administrative Code Rule 641-109.

As required by Utah Code Ann. § 63G-4-208(e)–(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code §§ 63G-4-401(3)(a), 403.

As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code § 63G-4-302, entitled, “Agency Review – Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule 641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code § 63G-4-302 and the deadline in Utah Admin. Code Rule 641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the

two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

DATED this ____ day of March, 2016.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Ruland J Gill, Jr., Chairman

Certificate of Service

I certify that I caused the above Findings, Conclusion, and Order to be served on the following parties by mail on the 3rd day of March, 2016:

William Gaines
Monument Resources, L.L.C.
914 Twin Rocks Drive
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Bluff, UT 84512

Nordeen Family Properties, LLC
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Phoenix, AZ 85085-8839

Steven P. Simpson
RA for Monument Resources, L.L.C.
913 East Navajo Twins Drive
PO Box 330
Bluff, UT 84512

A handwritten signature in blue ink, reading "Julie Ann Carter", is written over a horizontal line.